IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs August 15, 2007

STATE OF TENNESSEE v. JIMMY CANTRELL

Appeal from the Circuit Court for Rutherford County
No. F-47455 James K. Clayton, Jr., Judge

No. M2007-00048-CCA-R3-CD - Filed December 18, 2007

Appellant, Jimmy Cantrell, pled guilty to two counts of sale of cocaine. He was sentenced to serve ninety days of the sentence in incarceration prior to being released to probation. Later, Appellant pled guilty to a new charge of sale of cocaine. Appellant's probation was revoked. Appellant was sentenced on the new charge, and the trial court suspended the sentence after the service of a certain number of days and furloughed Appellant to the Rutherford County Drug Court Program.[1] Subsequently, Appellant was discharged from the program for violating its terms and conditions. The trial court then entered an order terminating Appellant's furlough and ordering Appellant to serve his sentences in their entirety. Appellant sought credit for time served in the Drug Court Program. The trial court denied the request. Appellant now appeals the trial court's decision denying his request for credit for time served in the Drug Court Program. Because an appeal of the denial of a motion to award jail credit is not a proper ground for appeal under Tennessee Rule of Appellate Procedure 3(b), we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal of the Trial Court is Dismissed

JERRY L. SMITH, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, and ALAN E. GLENN, JJ., joined.

Gerald L. Melton, District Public Defender and Russell N. Perkins, Assistant Public Defender, for the appellant, Jimmy Cantrell.

Robert E. Cooper, Jr., Attorney General & Reporter; Lacy Wilber, Assistant Attorney General; Bill Whitesell, District Attorney General, for the appellee, State of Tennessee.

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[1] The Rutherford County Drug Court Program is a community corrections program authorized by T.C.A. § 40-36-302. The program requires participants to comply with random drug screens, attend intensive group therapy, complete self-help support meetings, meet with a judge regularly and keep a journal, among other things. Rutherford County Drug Court, http://www.rutherfordcounty.org/drugcourt/ (last visited 11/28/07).

OPINION

Factual Background

On July 12, 1999, Appellant pled guilty to two counts of the sale of under .5 grams of cocaine, in violation of T.C.A. § 39-17-417(a)(3). As a result, Appellant was sentenced as a Range I standard offender to concurrent four-year sentences. The trial court ordered Appellant to serve ninety days of the sentence before being released to supervised probation for the balance of the sentence.

Subsequently, on January 27, 2003, Appellant pled guilty to one count of the sale of under .5 grams of cocaine. As a result, Appellant was sentenced to eight years as a Range II multiple offender. As a result of this new guilty plea, Appellant's probation was revoked in an order entered on January 27, 2003. The violation of probation order stated that Appellant agreed to the revocation based on the grounds specified in the warrant. Additionally, Appellant was ordered to serve the sentence of four years originally imposed in 1999. The trial court gave Appellant jail credit from May 5, 1999 to July 12, 1999; from March 13, 2002 to July 1, 2002; and from December 12, 2002 to January 27, 2003. Further, the State agreed to furlough Appellant to Drug Court, if accepted, any time after the service of six months in incarceration provided the court still had jurisdiction over Appellant. In an order entered June 9, 2003, Appellant's sentence was suspended, and he was furloughed to the Drug Court Program.

On November 9, 2005, Appellant was discharged from the Drug Court Program for violating the terms and conditions of the program. According to the order, Appellant "agreed per violation of probation order that failure to comply and complete the drug court program would be an agreed self-effective revocation."

On December 22, 2005, the trial court entered an order revoking Appellant's furlough to the Drug Court Program and directing that Appellant serve the balance of his sentence as previously imposed. The trial court ordered that Appellant was entitled to receive jail credits for any period of incarceration at the Rutherford County Adult Detention Center between the dates of May 2, 1999 and December 20, 2005.

On November 29, 2006, Appellant filed a pro se motion to receive credit for time spent in the Drug Court Program from June 12, 2003 to September 27, 2005. In that motion, Appellant argued that the Drug Court Program was a community-based alternative to incarceration that entitled him to credit on his sentence for time actually spent in the program under T.C.A. § 40-36-106.

The trial court denied Appellant's motion for jail credit on November 30, 2006. Appellant filed a timely notice of appeal and now challenges the trial court's denial of his motion to receive jail credit for time served in the Drug Court Program.

Analysis

On appeal, Appellant contends that the trial court erred in failing to credit Appellant with the time he spent in the Drug Court Program, a community-based alternative to incarceration, "after ordering that his furlough to such program was terminated and that he would be required to serve his sentence as originally imposed." Specifically, Appellant argues that T.C.A. § 40-36-106(e)(4) mandates that the trial court give Appellant credit for time "actually served in any community-based alternative to incarceration." The State, on the other hand, argues that Appellant's appeal should be dismissed because there is no appeal as of right from a trial court's denial of a request for credit for time served in community corrections.

We agree with the State. Appellant does not have an appeal as of right from his motion requesting sentencing credit. Rule 3(b) of the Tennessee Rules of Appellate Procedure contemplates an appeal from a judgment of conviction, "from an order denying or revoking probation, and from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding." The rule does not permit a direct appeal from a trial court's dismissal of a motion requesting sentencing credits. *See Jonathan Malcolm Malone v. State*, M2004-02826-CCA-R3-CO, 2005 WL 1330792, at *2 (Tenn. Crim. App., at Nashville, June 6, 2005) (dismissing defendant's appeal pursuant to Rule 3 from a denial of defendant's motion for jail credit); *State v. James Ray Bartlett*, No. M2002-01868-CCA-R3-CD, 2004 WL 1372847, at *2 (Tenn. Crim. App., at Nashville, Jun. 16, 2004), *perm. app. denied*, (Tenn. Nov. 15, 2004) (dismissing defendant's appeal pursuant to Rule 3 from the denial of defendant's motion to receive jail credit as improper even when viewed as a motion to correct and/or amend judgment); *State v. Louis Clyde Jackson*, E2003-02019-CCA-R3-CD, 2004 WL 2387501, at *1 (Tenn. Crim. App., at Nashville, Oct. 26, 2004) (dismissing the defendant's appeal pursuant to Rule 3 from the denial of defendant's motion to correct and/or amend judgment); *State v. Greg Smith*, E2003-01092-CCA-R3-CD, 2004 WL 305805 (Tenn. Crim. App., at Nashville, Feb. 18, 2004) (dismissing defendant's appeal pursuant to Rule 3 from the denial of his motion to increase the number of pretrial jail credits awarded). Thus, Appellant has no appeal of right in the instant case.

Despite the lack of availability of a direct appeal, in the interest of justice, the appellate court may under some circumstances transform an improperly filed appeal into a petition for a writ of certiorari. *State v. Leath*, 977 S.W.2d 132, 135 (Tenn. Crim. App. 1998); *see* Tenn. R. App. P. 36(a).

T.C.A. § 27-8-101 is the codification of the common law writ, this section states:

> The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when in the judgment of the

court, there is no other plain, speedy, or adequate remedy. This section does not apply to actions governed by the Tennessee Rules of Appellate Procedure.

T.C.A. § 27-8-101. "Generally, the writ of certiorari is limited in application and may not ordinarily be used 'to inquire into the correctness of a judgment issued by a court with jurisdiction.'" *Moody v. State*, 160 S.W.3d 512, 515 (Tenn. 2005) (quoting *State v. Adler*, 92 S.W.3d 397, 401 (Tenn. 2002)). Moreover, the supreme court stated that "[a]lthough a trial court may correct an illegal sentence at any time, appellate courts may not review the denial of a motion to correct an illegal sentence through the common law writ of certiorari." *Id.* The appropriate method for collaterally challenging an allegedly illegal sentence is through a habeas corpus action. *Id.* Thus, this appeal is not proper as a petition for the writ of certiorari.

Conclusion

For the foregoing reasons, this appeal is dismissed.

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JERRY L. SMITH, JUDGE